

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**COUNTY OF BUTLER, *et al.*,
Plaintiffs**

v.

**THOMAS W. WOLF, in his official
capacity as Governor of the
Commonwealth of Pennsylvania, and
RACHEL LEVINE, MD, in her official
capacity as Secretary of the Pennsylvania
Department of Health,
Defendants**

No. 2:20-CV-677-WSS

Complaint Filed 5/7/20

DECLARATION OF NEIL WEAVER

I, Neil Weaver, hereby state, subject to the penalties of perjury, that the following is true and correct based upon my personal knowledge:

1. I was appointed Executive Deputy Secretary, Pennsylvania Department of Community and Economic Development on March 2, 2015 and have continuously served in this position since that time.

2. As Executive Deputy Secretary, I function as the Chief Operating Officer for the agency. I am responsible for a nearly \$180 million budget that includes both federal and state funding. My duties include providing all direction to all agency operations including budget oversight and implementation, human resources, program management and promotion.

3. Prior to serving in this role, I served as a director of communications and press secretary for the Pennsylvania Department of Environmental Protection, as well as two national environmental firms specializing in client management, government, communications and community relations, as well as a national fundraising manager for the Cystic Fibrosis Foundation.

4. I graduated from Clarion University of Pennsylvania with a Bachelor of Science Degree in Communications and currently serve as a member of the Board of Trustees for the University.

5. Through my role as Executive Deputy Secretary, I am familiar with the waiver process set up after the March 19, 2020, Business Closure Orders were issued by Governor Wolf and Secretary Levine.

6. Any business that was closed by the Business Closure Orders but wanted to request permission to operate was required to request a waiver by submitting an online form via the DCED website.

7. The form, “Waiver Process for Keeping Physical Locations Open” requested the following information:

- a. Business name;
- b. Business address including county;
- c. Contact information;
- d. Business description;

- e. Number of employees;
- f. Explanation/Justification of how the business meets the definition of life-sustaining;
- g. Explanation of whether the business has a plan to meet CDC recommended guidelines to maintain employee safety during the COVID-19 pandemic; and
- h. How many employees would be in the company's office or physical location in order to do the critical work?

A true and correct copy of the Waiver Process for Keeping Physical Locations Open Form (hereinafter "Waiver Form") is attached hereto as Exhibit A.

8. A team of economic development professionals was assembled to review the waiver requests.

9. In reviewing a waiver request, team members considered the business entity's NAICS code as well as the information provided on the Waiver Form. This enabled the reviewer to understand both a business' primary line of business operations as well as what operations the business was proposing to undertake if permitted to open.

10. Responses to waivers fell into one of three general categories:

- a. Waiver denied because business is not life-sustaining;
- b. Waiver granted because business is life-sustaining; or
- c. Business does not require a waiver to operate.

11. Businesses operating in industries that were subject to particular

restrictions on operations, such as construction or auto sales, received responses specifically identifying those restrictions in addition to or in lieu of the general categories discussed in para 10. .

12. Responses were generated daily.

13. On April 1, 2020, the Governor's administration was announced that the period for submitting waiver requests would close on April 3, 2020 at 5:00 p.m.

14. By the time the request period closed, DCED received 42,380 waiver requests. Of those requests, 6,124 were granted and 12,812 were denied. 11,636 were given determinations that a waiver was not required.

15. Some waiver requests did not actually seek an exemption or waiver, but instead asked questions or contained complaints, while others received only industry specific responses. As such, the sum of the number of waiver responses does not equal the number of requests that were received.

16. I have reviewed DCED's records to determine if the Business Plaintiffs submitted waiver requests.

17. DCED has no record of the following Plaintiffs submitting waiver requests:

- a. Nancy Gifford and Mike Gifford dba Double Image Styling Salon;
- b. Prima Capelli, Inc.;
- c. Paul Crawford dba Marigold Farm;

- d. Cathy Hoskins dba Classy Cuts Hair Salon;
- e. Steven Schoeffel; and
- f. Starlight Drive-In Inc.

18. R.W. McDonald and Sons, Inc. submitted a waiver request which was denied. A notification of the denial was sent on April 11, 2020. The waiver request contained the following information:

- a. Business Description: Appliance Dealer & Service Dealer
- b. Justification: We are the only independent store in Butler selling appliances and servicing appliances. Customers are calling us with down refrigerators and freezers. We need to take care of our elderly customers in this time of need. They are frantic with nowhere to turn for this service in Butler. Please grant us this waiver as soon as possible. Thank you.

A true and correct copy of the waiver request of R.W. McDonald and Sons, Inc. is attached hereto as Exhibit B.

19. Skyview DriveIn LLC submitted a waiver request (Waiver ID 1fb63359-c78a-488a-825b-0082dc56074e) which was denied. A notification of the denial was sent on April 7, 2020. The waiver request contained the following information:

- a. Business Description: Drive-in movie theatre and restaurant
- b. Justification: Provides carry out food and outdoor entertainment with enough space (8 acres) for social distancing. WE have had churches ask to perform Sunday services at the drive-in. All cars would be parked for movies or services one per 18 ft (one between each set of poles). For services only the pastor and a couple

helpers will be permitted out of vehicles to make sure others stay in their vehicles. We will have a restroom available if there is a need. It would be cleaned in between customers.

A true and correct copy of the waiver request submitted by Skyview DriveIn LLC is attached hereto as Exhibit C.

20. Businesses locating in counties that have entered the “green” phase of the Commonwealth’s Reopening Plan do not require a waiver to open.



Date: January 9th, 2020

Neil Weaver
Executive Deputy Secretary
Pennsylvania Department of
Community and Economic
Development